

Implementation of Community Protection of Gurabunga Customary Law: An Empirical Analysis of Customary Law Practices and Their Recognition by the State

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Abstract

Gurabunga Village, located in Tidore District, Tidore Islands City, has a long history as part of the Tidore Sultanate and is an area with customary law communities that still preserve their traditions. This study aims to examine the process of changing the status of Gurabunga Village to a Customary Village, as well as its implications for the recognition and legal protection for the Gurabunga customary law community. The method used is empirical legal research with a sociolegal approach, collecting data through interviews, observations, and studies of related legal documents. The results of the study show that the Gurabunga community has appropriate characteristics to be recognized as a customary law community based on Permendagri No. 52 of 2014, with customary wealth in the form of customary land that is managed communally and protected by local customary law. The process of changing this status involves community initiatives through village deliberations, fulfillment of administrative requirements, and local government approval. Meanwhile, the biggest challenge in the implementation of legal protection of customary rights is the lack of understanding from local governments regarding the importance of recognizing the rights of customary law communities. Therefore, this study suggests the importance of strengthening regulations and empowering customary law communities through more inclusive policies. The recommendation of this study is to accelerate the recognition of indigenous peoples in Indonesia, by providing space for communities to fight for their indigenous rights within a national legal framework that is responsive and adaptive to local social and cultural needs.

I. Introduction

Indonesian customary law societies have a long history and play a role in socio-cultural life, both in the past and in the structure of modern society today.¹ Gurabunga Village, located in Tidore District, Tidore Islands City, is one of the areas with customary law communities that still live and preserve their customary traditions. This village, historically as part of the Tidore Sultanate, has a uniqueness in its cultural diversity, social structure, and kinship of its people. Various customary customs inherited from their ancestors, such as agricultural rituals, customary land management, and customary laws that govern daily life, have become an important part of their lives. With the existence of national legal rules that recognize and protect customary law communities, the issue of recognition and protection of the rights of the Gurabunga indigenous people is important to be further researched.

Gurabunga Village is an area with unique geographical conditions, located in the Kie Matubu mountains with an altitude of 860 meters above sea level, which is traditionally fertile land and suitable for agriculture and plantations. The livelihood of the Gurabunga community, most of whom are farmers, with agricultural products such as nutmeg, cloves, avocados, and cinnamon.² This abundant natural resource has been managed for generations through customary principles that have existed since the time of the Tidore Sultanate. In managing the land and natural products, the Gurabunga people follow customary laws that require special rituals in every agricultural activity, such as the *tolagumi* ritual for land clearing and the *boso kene* ritual to beg for an abundance of crops. The sustainability of this customary law reflects how closely linked the culture, law, and social life of the people in Gurabunga are.

However, although the Gurabunga customary law community still maintains their traditions, the protection of their customary rights still faces a variety of challenges, especially in the realm of national law which is increasingly leading to an administrative-based system of government. Since the promulgation of Law Number 6 of 2014 concerning Villages, as well as related government regulations, customary villages have been given space to propose a change in status from a village to a customary village. Gurabunga, which was originally part of Gamtufkange Village, has long aspired to return to a form of customary government that was more in line with their cultural and social characteristics. This research aims to further understand the process and mechanism of changing

¹ Hutabarat, S. A., Judijanto, L., Rahim, E. I., Nuraeni, Y., Takdir, T., Zamrud, W. O., Citranu, C., Herman, H., & Yase, I. K. K. (2024). *Hukum adat Indonesia: Sejarah dan perkembangannya*. PT. Sonpedia Publishing Indonesia.

² Kamarudin, A., Pasongli, H., Salam, R., Marthinu, E., & Amelia, R. N. (2022). Kearifan Lokal Masyarakat Dalam Mengelola Lahan Pertanian Di Kelurahan Gurabunga Kota Tidore Kepulauan. *Jurnal GeoCivic*, 5(1). <https://ejournal.unkhair.ac.id/index.php/geocivic/article/view/4929>

the status of a village to a customary village and its implications for the legal protection of the Gurabunga customary law community.

According to Permendagri No. 52 of 2014, the recognition of customary law communities is not only seen from geographical and social aspects, but also from legality and administrative aspects involving the identification of history, customary territories, customary law, customary property, and customary government institutions. Based on the regulation, the Gurabunga customary law community has qualified criteria to be recognized as a customary law community, with customary wealth in the form of customary land that is managed communally and protected by local customary law. Gurabunga customary law, which covers various aspects of life, both economic, social, religious, and political, has become an umbrella that regulates people's lives in harmony. Therefore, it is important to evaluate how such customary laws are recognized and protected in the context of national law.³

The Gurabunga community is also known for its natural resource management which is highly dependent on applicable customary rules. Every land management action, especially in terms of clearing forests for agriculture, begins with traditional rituals that aim to be able to preserve the environment and avoid social conflicts in natural resource management. In addition, the customary government system applied in Gurabunga also has a distinctive structure, with a traditional chief or "*Sowohi*" who leads each clan and is responsible for the implementation of customary law and the sustainability of customary rituals. Therefore, the aspect of customary law recognition in the realm of state policy has become very relevant, especially related to the recognition of customary lands and the authority of customary government.

However, even though the recognition of indigenous peoples is regulated in various laws and regulations, the implementation of this recognition still often faces obstacles. One of the biggest challenges is the lack of understanding and awareness from local governments and the public about the importance of recognizing customary rights. The process of legal recognition of indigenous peoples, which involves efforts to identify and verify their rights, requires a transparent and accountable mechanism. Therefore, the protection of the Gurabunga customary law community must be carried out by paying attention to the balance between customary law and state law, to be able to create a space that allows the sustainability of tradition as well as integration with modern government systems.⁴

³ Manarisip, M. (2012). Eksistensi Pidana Adat dalam Hukum Nasional. *Lex Crimen*, 1(4). <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/900>

⁴ Sari, D. (2023). *Tradisi Lisan Kantola Pada Masyarakat Muna: Bentuk, Fungsi, Dan Makna*. Penerbit NEM.

This research aims to delve deeper into the implementation of legal protection for the Gurabunga customary law community, both in preventive and repressive aspects. This research will assess the extent to which the protection of indigenous peoples' rights can be implemented in practice, as well as how existing challenges and opportunities can be used to increase the effectiveness of legal recognition and protection for indigenous peoples. In addition, this research will also examine how the Gurabunga community can be more active in fighting for their rights through a legal approach based on cultural and customary principles. This research also aims to provide recommendations related to strengthening legal protection for the Gurabunga customary law community, both positive legal approaches and community empowerment.

2. Research Method

This research uses legal research methods, focusing on the application and implementation of law in the field, especially legal protection of Gurabunga customary law communities. This method explores how state law is applied in practice, and the extent to which customary law and state law interact with each other and function in the life of the Gurabunga customary law community. Empirical legal research is oriented to facts and real events that occur in the empirical field,⁵ with the aim of evaluating the effectiveness of the law in providing protection to customary law communities, as well as identifying potential conflicts or obstacles that exist in the application of applicable law. The type of research used in this study is empirical legal research with a sociological legal research approach. This approach focuses more on the social relations that exist in the community and how the law is applied in the social and cultural context of that community.⁶ Therefore, in this study, not only are the applicable legal norms discussed, but also their practice in the field is examined. This research aims to analyze the interaction between state law and customary law, and to see that state law can accommodate the existence of Gurabunga customary law communities effectively and sustainably. The researchers explored the gaps that may exist between written laws and how they are applied in the lives of people who uphold their customary laws.

The main data source used in this study is field data, which was obtained through interviews with various parties who have a role in the application of customary law and state law in Gurabunga. This interview will be conducted with traditional leaders, clan chiefs, and community leaders who are directly involved in the

⁵ Efendi, J., & Ibrahim, J. (2018). Metode Penelitian Hukum: Normatif Dan Empiris (304 halaman). Prenada Media; Adiyanta, F. S. (2019). Hukum dan studi penelitian empiris: Penggunaan metode survey sebagai instrumen penelitian hukum empiris. *Administrative Law and Governance Journal*, 2(4), 697-709. <https://doi.org/10.14710/alj.v2i4.697-709>

⁶ Fuad, F. (2020). Socio legal research dalam ilmu hukum. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 2(2), 32-47. <https://doi.org/10.37631/widyapranata.v2i2.261>

implementation of customary law. In addition, interviews will also be conducted with local government officials involved in the recognition and legal protection of indigenous peoples. The interview aims to explore perspectives from various parties on how state law is applied, whether there are gaps or conflicts in the application of customary law, as well as local government policies in protecting the rights of customary law communities. Relevant legal documents such as laws and regulations, local regulations, and government policies governing the recognition of indigenous peoples will also be analyzed to provide a clearer picture of the application of state law and how customary law functions in society.

The data collection methods used in the study included several key techniques: in-depth interviews, participatory observations, and legal document studies. In-depth interviews will be conducted with various relevant parties such as indigenous leaders, community leaders, and local government officials who are directly involved in the implementation of customary law and the recognition of customary law communities. This in-depth interview aims to explore more detailed and in-depth information about the application of customary law in the community and their views on the recognition of state law. Participatory observation is carried out by being directly involved in the life of the Gurabunga community to observe how customary law is applied in daily practice, such as in customary rituals and customary land management. The researcher will participate in customary activities or relevant customary law activities to get a direct overview of legal practices applied in the community. The study of legal documents will include an analysis of applicable laws and regulations at the national and regional levels related to the recognition and protection of the rights of customary law communities. The documents analyzed included Permendagri No. 52 of 2014, laws on villages, and regional regulations governing the management of customary lands and other customary law community rights.

The data analysis technique used in this study is juridical-empirical analysis. This technique allows researchers to analyze prevailing legal practices by directly linking them to existing legal norms.⁷ In this analysis, the researcher will identify whether the application of state law in the field is in accordance with the provisions written in the laws and regulations. The researcher evaluates whether state law provides effective protection to customary law communities, as well as whether customary law runs in accordance with the values embraced by the Gurabunga community. In addition, this analysis will also explore differences or conflicts between customary law and state law, as well as how these two legal systems interact with each other in practice. The researcher will also examine whether the local government's policy in terms of the recognition of customary

⁷ Nugraheni, T., Sinurat, A., & Kian, D. A. (2024). Analisis Yuridis Penerapan Perlindungan Hukum dalam Melindungi Pengguna Layanan Internet Banking dari Cyber Crime. *Jurnal Hukum, Politik Dan Ilmu Sosial*, 3(2), 63-79. <https://doi.org/10.55606/jhpi.v3i2.3715>

law is in accordance with the needs of the Gurabunga customary law community, as well as whether the implementation of the law provides fair and equal access for indigenous peoples. As part of the validation of the findings, this study will use data triangulation. This triangulation is carried out to ensure the accuracy and credibility of research findings by comparing data obtained from various sources, such as interviews with indigenous leaders, communities, government officials, and relevant legal documents. In this way, this study will produce objective findings and avoid potential biases that may arise from a single source or data collection method. In addition, this triangulation will also provide a more holistic approach to the issues being studied, as it includes a variety of different perspectives on the application of state law and customary law in Gurabunga.

Further validation was also carried out by comparing the findings of this study with similar studies that existed, both in other regions in Indonesia and in other countries that have customary law traditions. This study compared findings on the application of state law to customary law communities with similar practices elsewhere, to assess whether the findings in Gurabunga reflect a broader trend regarding the recognition and protection of customary law communities. This approach is important to provide broader insights into the successes and challenges of integrating customary law with state law, as well as to provide more informative recommendations on improving legal policies in Indonesia. This research will also identify the sustainability of the application of customary law in the Gurabunga community, especially regarding the management of customary lands, customary rights, and the role of the state in providing legal protection. This research aims to provide concrete recommendations regarding strengthening legal protection for the Gurabunga customary law community, both in terms of government policies and in terms of law implementation practices in the field. Thus, this research is expected to contribute to the development of a more inclusive and responsive legal system, which pays attention to the rights of indigenous peoples in Indonesia

3. Results and Discussion

Existing Conditions of Gurabunga Village, Tidore District

Gurabunga Village, located in Tidore District, Tidore Islands City, is an administrative area that was expanded from Gamtufkange Village in 1968. Geographically, Gurabunga Village is located at the position of 00o39.152'–00o41.722' North Latitude and 127o25.590'–127o25.660' East Longitude. The boundaries of its administrative area include Kalaodi Village in the north, Topo Village in the south, Folarora Village in the east, and Jaya Village in the west. This area is in the mountains of Kie Matubu at an altitude of 860 meters above sea level with an area of 1.55 km² which is divided into 2 RWs and 4 RTs. The geographical condition of the Gurabunga Village area is dominated by hilly plateaus with *patsolin* and *latasol* soil types that are suitable for agriculture and plantations.



Figure 1. Location of Gurabunga Village, Tidore District

The region has favorable climatic conditions for agricultural activities, with average monthly temperatures ranging from 25°C to 26.6°C. The average air humidity ranges from 80% to 90%, while wind speeds range from 11 km/h to 25 km/h. In the agricultural sector, the dominant crops are perennials such as nutmeg, cloves, avocados, and cinnamon, while other horticultural crops are for personal needs only. Based on the Regional Spatial Plan (RTRW) of Tidore Islands City for 2013-2033, Gurabunga Village is also identified as an area that develops ecotourism potential. The Gurabunga community is mostly farmers with geographical characteristics that support this livelihood.

The population of Gurabunga Village, which in 2022 totaled 638 people, is mostly indigenous, although there is also a mixing of the population through marriage. Public service facilities in this area include kindergartens, elementary schools, mosques, prayer rooms, football fields, as well as land transportation facilities connected by fixed routes. Telecommunication infrastructure is also available with two BTS units and 160 electricity customers. However, the obstacle faced is that there is still no piped drinking water supply system from PDAM, so the community depends on rainwater and the provision of independent tank water. On the other hand, the layout of the settlements in Gurabunga Village follows the length of the mountain, with the main road paved and the environmental road in the form of cement paths. The houses in this area are generally permanently in shape with cement and brick materials, while the traditional houses used by the traditional chef, *Sowohi*, are made of saffron leaves and bamboo that still maintain authenticity and tradition.

The Existence of Gurabunga Customary Law Communities: Analysis of Permendagri Number 52 of 2014

In the realm of cultural and legal diversity in Indonesia, diversity is the main door to optimizing the protection of citizens' constitutional rights. The formulation of this constitutional right is expressively verbally stated in Article 18B paragraph (2) of the 1945 Constitution, which states that "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Republic of Indonesia, which are regulated in the Law". Satjipto Rahardjo mentioned 4 conditions in Article 18B paragraph (2) of the 1945 Constitution as a form of hegemonial state power that determines the existence or absence of indigenous peoples. The state wants to interfere, regulate everything, define, divide, and do *indelingsbelust*, which is carried out by and according to the perception of the state power holder. Soetandyo stated that in the provisions of the national laws and regulations of the Republic of Indonesia, the existence of customary law communities (MHA) in this country will only be recognized if there are four conditions that can be met, namely 1) the MHA is still alive; 2) according to the development of the community; 3) in accordance with the principle of the unitary state of the Republic of Indonesia; and 4) its existence regulated by law. These four conditions are juridical-normative benchmarks that must be considered by the national government if they want to recognize the existence of MHA.⁸

Through the Republic of Indonesia, the state's recognition of the existence of *zelfbesturende landschappen* and *volksgemeenschappen* as well as the characteristics of the archipelago shows the plurality of alliances that are native throughout the archipelago that have developed into autonomous regions that are special and special or also use the nomenclature of regional morphological characteristics.⁹ More broadly, the plurality of these origins is accommodated through Article 18B paragraph (2) of the 1945 Constitution as a necessity of state appreciation for the existing customary law communities and jointly form the state. The existence of the law that lives in a customary law society is a reality as a pluralistic nation. This existence is epistemologically obtained from beliefs, sensory experiences, intuition, and reason from customary law communities in carrying out their lives to form religious systems, knowledge systems, and equipment systems. In the context of the nation, the soul of the Indonesian people is magical, religious and communal which is abstracted into the values of Pancasila which contains the paradigm of legal pluralism which contains the values of protection of all citizens and their rights to achieve the goal of fair and equitable welfare.

⁸ Wignjosoebroto, S. (2022). *Mempersoalkan Empat Syarat Pengakuan Eksistensi Hukum Adat*. Tim Peneliti Pusat Strategi Kebijakan Multilateral, Review Kebijakan Kemitraan: Kajian Masyarakat Hukum Adat Indonesia dan Strategi Kebijakan Untuk Penguatan dan Perlindungan Hukumnya. BSKLN.

⁹ Badan Registrasi Wilayah Adat (BRWA). (n.d.). www.brwa.or.id. (accessed 22 September 2024).

The legal subject of this study is "customary law society" as a translation of "legal society (*rechtsgemeenschappen*)", which according to formulated as "organized groups of permanent character having their own material and immaterial property".¹⁰ In conception which explains that:¹¹ "The term is here rendered as jural communities... derive their distinct, legal autonomy in domestic affairs from the fact that each has a) its discrete representative authority; and b) its discrete communal property especially land, over which it exercises control." The meaning of Ter Haar B., which is re-extracted by Alting, is as follows: "an orderly group of society, settled in a certain area, has its own power, and has its own wealth in the form of both visible and invisible objects, in which the members of each unit experience life in society as a natural thing according to the nature of nature and none of the members has the mind or inclination to dissolve the bond that has grown or abandon it in the sense of breaking away from it for good".¹²

Ter Haar B.'s view above shows that people are related to each other, have a bond of solidarity with the same interests and awareness, so that they behave and behave in such a way as a unit and do not have wishful thinking or thoughts to dissolve the alliance. Customary law society is a more appropriate terminology in terms of the analysis of legal norms as a subject of law recognized in national and international law which has *juris in rem* as the personification of a set of legal norms, namely a collection of human beings who are organized and form a unit, having the following characteristics: a) the existence of an orderly human unity that has emotional attachments; b) have a unity of territory that is permanently occupied in a certain area; c) have a unit/ruler leader in his community; d) have common wealth (tangible or intangible); e) have a legal union; and f) have values and religion is believed to be true. This is seen in the field of civil law, then customary law communities are legal subjects *natuurlijke persoon* and it can be in the form of *rechts persoon* in the form of associations or associations which are also known in the conception of customary law as organizations formed by the Customary Law Community, in addition to clans, Nagari, and villages. With the geographical characteristics of the archipelago, the distribution of ethnic groups that occur in coastal areas that are places of coastal culture development develops to islands to the interior. The distribution of ethnic groups in the coastal areas that currently form an administrative area at the level of villages/coastal sub-districts/seaside is identified by 15.32% and has increased every year.¹³

¹⁰ Ter Haar, B. (2013). *Asas-Asas Dan Susunan Hukum Adat*. Balai Pustaka.

¹¹ Holleman, J. F. (1981). *Van Vollenhoven on Indonesia Adat Law*. Springer Science Business Media.

¹² Alting, H. (2010). *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat Atas tanah*. LaksBang PresSindo; Muhammad, B. (1994). *Asas-Asas Hukum Adat: Suatu Pengantar*. Pradnya Paramita.

¹³ Subdirektorat Statistik Lingkungan Hidup. (2018). *Statistik Sumber Daya Laut Dan Pesisir 2018*. Badan Pusat Statistik.

The existence of this administrative area shows the formation of an orderly society, which Soepomo said based on the basis of its composition in Indonesia is formed into two legal alliances, as follows: "1) based on hereditary relations (genealogy), namely legal alliances that occur on the basis of hereditary relationships according to patrilineal, matrilineal or parental arrangements; and 2) based on the territorial environment, the membership of the fellowship is determined in a place of residence/region".¹⁴ Customary law societies that occupy the territory of the *Zelfbesturende landschappen* and *Volksgemeenschappen* have 4 common characteristics according to F.D. Holleman in Otje Salman, as follows: "1) Religious Magister", interpreted as a mindset based on religiosity, which is the community's belief in the existence of something sacred. Before the customary law community met the religious legal system, this religious system was manifested by a pre-logical, animistic way of thinking, and belief in the supernatural that inhabits an object; 2) Communal, customary law societies have the assumption that everyone, a member of the community, is an integral part of society. It is also believed that the interests of individuals should be adjusted to the interests of society because no individual is independent of his society; 3) Concrete, this trait is interpreted as a clear or tangible pattern, showing that every legal relationship that occurs in society is not carried out secretly or abstractly. The transactions that occur are real; and 4) *Kontan* (contante handling), contains the meaning of participation, especially in terms of achievement fulfillment, where achievement fulfillment is always accompanied by counter-achievement given immediately (instantaneously).¹⁵

Customary law communities are described in detail which according to the Minister of Home Affairs Regulation Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities defines: "Customary Law Communities are Indonesian citizens who have distinctive characteristics, live in groups harmoniously according to their customary law, have ties to ancestral origins and/or similarities of residence, there is a strong relationship with the land and the environment, as well as the existence of a value system that determines economic, political, social, cultural, and legal institutions and utilizes a certain area for generations." For the recognition and protection of customary law communities, this is carried out through the following stages: a) Identification of customary law communities; b) Verification and validation of customary law communities; c) Determination of customary law communities. Furthermore, Article 5 paragraph (2) which explains that the identification of this customary law community is carried out by paying close attention to: a) The history of customary law communities; b) Customary territories; c) Customary law; d) Property and/or customary objects; e) Customary government institutions/systems. Thus, the existence of the Gurabunga customary law community if identified based on the elements mentioned in Permendagri Number 52 of 2014, is as follows:

¹⁴ Soepomo, R. (2013). *Bab-Bab Tentang Hukum Adat*. Balai Pustaka.

¹⁵ Soemadiningrat, O. S. (2011). *Rekonseptualisasi Hukum Adat Kontemporer*. Alumnus.

a) History of Gurabungan Customary Law Society

The Kingdom of Tidore, from its inception, was established after Jou Kolano Sahjati or Said Muhammad Nakel who ascended the throne on 12 Rabiul Awal 502 H (1108 AD) until the 4th king, the center of the Tidore kingdom could not be ascertained. It was only in the era of Jou Kolano Bunga Mabunga Balibung, information about the center of the Tidore kingdom was revealed, it was still in debate regarding the location of Balibunga, because historical observers differed in determining where Balibunga was, some said it was in the North of Tidore, and some said it was in the interior of southern Tidore. According to which explains that the Kingdom of Tidore was originally located in the mountains of Batu Cina,¹⁶ to the south of Dodinga, but it is uncertain when the center of the kingdom was moved to the island of Tidore and who its first king was. According to his brief chronicle explains that when the first Kolano Ternate was inaugurated in 1257 AD,¹⁷ the Kingdom of Tidore had not yet been established because between 1277 and 1322 there were 6 Kolano on the throne of Tidore, each first; *Busa Muangi*, second; *Bubu*, third; *Bali Banga*, fourth; *Buku Madoya*, fifth; *Kie Matiti*, sixth; *Sele*. The life of the people on the island of Tidore is inseparable from the customs *se atorán* according to history, there used to be a majority of the population Muslim. The kinship system of the Tidore people is Patrilineal following the paternal line in lineage. The Tidore people on the island of Tidore according to history are a community group that has a connection to the origins of their ancestors for generations. This fact is told in several Tidore folklore that the descendants of the Tidore customary law community are related to the presence of Djafar Sadek, an Arab who came to North Maluku to marry a Maluku princess. The marriage gave birth to four sons and then became the ancestors of four Islamic kingdoms, namely Tidore, Ternate, Bacan, and Jailolo.

Gurabunga has 5 clans, namely: Mahifa, Folasowohi, Toduho, Tosofu Makene, and Tosofu Malamo. These 5 clans do not gather in one region but have their own territory (*eto se daerah*): Mahifa is the territory of Bukufululu, Folasowohi is the territory of Goyamahira, Toduho is the territory of Legomabuku, and Tosofu is the territory of Tolagosora. In 1950 the five clans gathered and agreed to gather the five clans into one in the village. The village was named Gamsung or Kampung Baru, still a child of the hamlet of Gamtofkange Village. In 1965, by agreement of the five clans, Gamsung Village was renamed Gurua Banga meaning "lake in the forest" because it was located adjacent to a lake in the middle of the forest. Furthermore, in 1967, Gurua Banga Village was expanded from Gamrufkange Village to an autonomous village. In 1981, the name of Gurua Banga was changed to Gurabunga by the Regent Ahmad Malawat. Gurabunga means Flower Garden is

¹⁶ Valentijn-Keyzer, F. (n.d.). Oud en New Oost Indie. In M. A. Amal (Ed.), *Kepulauan Rempah-rempah: Perjalanan sejarah Maluku Utara 1250-1950*.

¹⁷ De Clercq, F. S. A. (n.d.). Bijdragen tot de kennis der Residentie Ternate. In M. A. Amal (Ed.), *Kepulauan Rempah-rempah: Perjalanan sejarah Maluku Utara 1250-1950*.

felt to be more suitable than Gurua Banga is often distorted to Gura Banga means Forest Garden. Factually, the Tidore customary law community still exists, has been explained before, and must be acknowledged for its existence. So that the condition for the subject of customary rights has been met, namely the Tidore customary law community. The existence of the Tidore customary law community is followed by the existence of customary lands of the Tidore customary law community, one of which is *Hale Gimalaha*. Therefore, the condition for the existence of an object of customary rights has also been met. So that the explanation that the conditions for the recognition of the existence of the customary land of the Tidore customary law community according to Jamaluddin have been cumulatively met.

b) Gurabunga Customary Territory

Geographically, the territory of the Sultanate of Tidore is divided into three regions, namely Nyili Seba-seba (near area), Nyili Lofolofo (middle area), and Nyili Gulu-gulu (distant area). The Nyili Seba-seba area includes Kaiyasa to Mafu Tusu, Nyili Lofolofo includes Weda, Patani, Maba, and Waselei, while Nyili Gulu-gulu covers the Raja Ampat Islands, Papua Gam Sio, East Seram, Gorong, Kei, and Tanimbar Islands.¹⁸ The Sultanate of Tidore has 11 regional governments (Nyili), each of which controls the land granted from the Sultanate (*Hale Cocatu*) and the Sultanate land (*Hale Kolano*), which is divided into several villages and hamlets. The government of this region includes: 1) Gamtufkange Region; 2) Gamtumdi Region; 3) Bobato Gimalaha Region; 4) Bobato Sanggaji Area; 5) Oba Region; 6) Vedic Region; 7) Maba Region; 8) Patani Region; 9) Raja Ampat Region; 10) Papua Gam Sio Region; and 11) East Seram Region. The Gamtufkange area is divided into several villages or Soa/Marga, including: 1) Sadaha; 2) Tomayou; 3) Tambula Farm; (4) Ngosi; 5) Peace; 6) Tuguwaji; 7) Tomagoba; 8) Goto; and 9) Fomanyira Tobaru. As a customary territory located on the slopes of Mount Kie Matubu (Mount Tidore), the word Gurabunga comes from the word Gurua Banga; "Gurua" means lake and "Banga" means forest, so Gurabunga means lake in the forest. Before becoming the village of Gurua Banga, the surrounding community lived separately from one clan and another, with each clan living on land belonging to its clan, which is referred to in the Tidore language as *Hale Eto Se Daera*, which means land and territory belonging to the clan.

c) Gurabunga Customary Law

According to Soepomo, Customary Law is a living law because it embodies the real law of the community, constantly growing and developing and rooted in traditional culture. Thus, customary law is a law that lives and develops and

¹⁸ Ansar, J. (2016). *Keberadaan Tanah Adat Kesultanan Tidore Dalam Perspektif Hukum Nasional* (Master's Thesis, Graduate Program of Khairun University).

cannot be separated from the existence and dynamics of customary law communities.¹⁹ There are several conventions that serve as guidelines or role models for each alliance individually and collectively. The people of Tidore highly respect the customs left by their ancestors which are then inherited and obeyed in general by the people of Tidore until now. These customs are classified into several fields, namely the economic, religious, social, and cultural arts. In the social field, for example, the people of Tidore know the prohibition of stepping on sacred or sacred places. One of the places considered sacred is *jere*. According to the belief of the people of Tidore, *jere* is an ancestral grave that is considered to have spiritual power and is highly respected in its time, so the tombstones of the ancestors automatically appear on the surface of the ground. If these taboos are violated, then the person concerned will be subject to *balito*. These provisions also apply in terms of land tenure.

The tradition in land cultivation, namely gardening, begins with cutting the first grass and trees called *tolagumi*. *Tolagumi* is the initial ritual in land cultivation, which is carried out by going around the forest area to be worked by presenting two or more witnesses, usually local traditional leaders. The area that has been surrounded marks the area of land and the boundaries of the garden area. *Tolagumi* also requires residents who have just cleared forests for plantations not to cultivate all these forest areas. For example, if the area included in the ritual circle is four hectares, then two hectares will be cultivated first and the remaining two hectares will be left as a reserve for posterity. Even though some of the forests that are part of the ritual process circle before they are opened, it is already considered the property of the cultivator. The meaning of the *tolagumi* ritual itself is to pray that in the land clearing there are no obstacles in the work, so that the work runs smoothly. When carrying out the cultivation process, there is a ritual that is carried out, namely *boso kene*. *Boso kene* is a ritual in carrying out the process of clearing new land. Before the opening of the new land, traditional leaders (*simogam*) perform the *Boso Ritual* here. After that, the land can be used for farming. The meaning of this ritual is to pray for people's celebrations, for example for the sick, clearing land, or other heavy needs to be lighter. After the *boso kene* ritual is over, prayers by traditional leaders (*simogam*) were taken to the land clearing site, followed by food in the form of white rice and eggs that were taken in small quantities to be eaten by traditional leaders and the community who participated in the land clearing. After that, white rice and eggs are scattered on the land with the aim of providing food for the plants and living things on the land so that it becomes a blessing. There is a tradition that is carried out when plants are attacked by pests, namely rituals *ake sou*. *Ake sou* is a ritual performed by *tetuah* in preventing pests. The *ake sou* in the bamboo is brought by farmers to their land affected by pests and then watered. Ritual *Ake Sou* is done in *folasowohi*,

¹⁹ Matuankotta, J. K. (2018). Peran Aktif Masyarakat Hukum Adat Dalam Pembangunan Ekonomi. *Jurnal Sasi*, 24(2), 108.

the water in the bamboo is prayed for by traditional tips and after that it is watered with plants. According to the tradition of the Tidore people, water is the source of livelihood that is the source of the Gurabunga people to water their garden products.

d) Property and/or Customary Objects

F.D. Holleman constructs the general nature of customary law societies, namely religious, communal, concrete, and contingent in socio-cultural life, explaining that the mindset of indigenous peoples is based on religiosity, that is, beliefs about something sacred, even before meeting religious law. This belief is manifested in a pre-logical, animistic, and belief in the supernatural. This also means as a public belief that does not know the separation between the natural world (facts) and the occult world (hidden meanings behind the facts), both of which must always run in balance. The Sultanate of Tidore until now has relics of traditional objects that are treasures and symbols of power as well as sovereignty, government, and objects that are symbols of connection between the cosmos for ritual and religious functions. The traditional object that is a symbol of power and sovereignty is the crown, which is a marker of the authority of the king/sultan, indicating that a person rules and has the right to rule over the kingdom or territory. The relics of the Tidore kingdom also include the Sultan of Tidore Mosque, which was built in 1700, the Keto Kie, and the stamp of the Tidore Sultanate as a form of legality in dealing with parties outside the Tidore Sultanate. Thus Gurabunga, with the position of *Bobato Hakekat*, is the leader of this Sultanate who handles spiritual matters around the supernatural realm, traditional objects that become symbols regarding cosmological relationships can be seen from residences to ritual equipment/media.



Figure 3. Sowohi Mahifa Traditional House

Each clan in Gurabunga has a traditional chief and a traditional house. The traditional leader has the right to live in the traditional house during his tenure and get a clove plantation to manage. The residence of the traditional chief, or traditional house, has typical traditional architectural forms of Tidore called *Fola Jiko Se Sorabi*. *Fola* (home), *Jiko* (sudut), dan *Sorabi* (porch/terrace). This house is a landed house with a rectangular plan, using materials that are mostly made of bamboo, including the frame of the building, walls, ceiling, and roof frame. Roof covering using materials *rumbia* or *katu*, while the floor is made of compacted soil. The division of space consists of 5 rooms which are symbolized as the amount of prayer time. On the walls and pillars of the house there are 2 rope ties as a symbol of the two sentences of the creed that bind the human body. One of the rooms in the traditional house is devoted as a room for treatment called a praise room. In addition, traditional houses function as a place to resolve conflicts and village problems. For the Sultanate of Tidore itself, Gurabunga traditional houses, especially traditional houses *Sowohi Mahifa*, has a very important role, because the sultan underwent a spiritual coronation by the traditional head in this traditional house, after previously the Sultan of Tidore was elected by the *Bobato shari'a* in *Soasio*. The Sultan also came to this traditional house to take blessings or ask for safety for himself and his people.²⁰ Regarding the management of agricultural resources, the Gurabunga Customary Law Community in clearing land begins with a land clearing ritual that aims to ask for the protection and abundance of Allah SWT's harvest. This land clearing ritual is an early agricultural cycle that is practiced in almost all customary law communities.

e) Customary Governance Institutions/Systems

The government system of the Kingdom of Tidore in the past has been quite established and running well. This can be seen in the implementation of the royal government, the Sultan and the council of viziers are based on the philosophy "*Adat ge mauri Syara, Syara mauri Kitabullah se Sunatul Rasul*," which means the custom of the joint of Sharia (religious teachings) and the Sharia joint of the book of Allah SWT (Al-Qur'an) and sunatul rasul which are implemented through the principles of the administration of government and social relations. In the principles of government administration, it includes: 1) *sah se'fakat* which means deliberation and consensus; 2) *jaga loa se'banari* means to act honestly, fairly and correctly; 3) *kie se'kolano* means an integral relationship between the leader and the community; 4) *adat se'nakodi* means upholding just and civilized human values; 5) *atur se'aturan* means the delegation of authority based on the law and decree of the sultan; and 6) *fara se'filang, munara se'karja* means that the

²⁰ Kajian Pelestarian Kawasan Kedadong Tidore. (2014). *Kajian Pelestarian Kawasan Kedadong Tidore*.

processing and distribution of natural resource products is handed over to subordinates or regions *nyili-nyili*. Meanwhile, in the principle of social relations that must be obeyed by social associations, including: 1) *budi se'bahasa* that is, manners in speaking the word; 2) *suba se'paksan* namely karmic rules in behavior; 3) *ngaku se'rasai* that is, upholding trust and trust; 4) *cing cingari* popular and humble; 5) *mae se'kolofino, tede suba te jou madubo*, namely prioritizing shame and fear of Allah SWT.

In addition to the principles of government and social relations, the Sultanate of Tidore in the past was quite established in the arrangement of its constitutional system. This is marked by the existence of the "Kie Se Kolano Regulation 1868 AD" constitution as the basis for the implementation of the system and structure of government in the Kingdom of Tidore. Regulation *Kie se Kolano* written in the Tidore language, consists of 28 Fatsal (Articles). Articles in the Regulations *kiesekolano* regulates the implementation of government affairs, secretarial affairs, order and security, and judicial affairs, which according to Irham Rosyidi has adhered to the principle of the state of law because it contains: the principle of power as a mandate as stated in the customary oath is called "*bobeto*";²¹ the principle of deliberation; the principle of equality; the principle of accountability to the Sultanate/state; principles of the enforcement and protection of human rights; the principle of peace; and the principle of obedience of the people. The highest structure of power is in the hands of the Sultan and assisted by the so-called Council *Wajir*. When Tidore reached its heyday in the era of Sultan Nuku, the government system in Tidore was running well. At that time, the Sultan (*Kolano*) assisted by a Council of Viziers, in the Tidore language called *Syara*, *adat se nakudi*. This council is headed by the Sultan and its executors are handed over to *Joujau* (Prime Minister). The members of the Council of Viziers consist of *Bobato pehak raha* (four parties *bobato*; a kind of department) and a representative of the jurisdiction.

The Sultan's leadership as the head of state assisted by the Wajir Council which consists of 4 (four) members *pehak* or better known as "*Kolano Se'i Bobato Pehak Raha*," according to Faaroek is a sharia *bobato* structure where the highest structure of power is in the hands of the Sultan, while the *bobato* structure of Hakikat is held by Sowohi.²² This *bobato* is tasked with regulating and implementing the decisions of the Council of Viziers which consists of 1) *Pehak Adat*, Government Affairs is headed by *Joujau* who is in charge: a) Law; b) *Sangaji*; c) *Gimalaha*; dan d) *Fomanyira*. 2) *Pehak Kompania*, Defense Affairs is headed by the Capita/Major who is in charge: a) *Kapita Kie*; b) *Jou Mayor*; c) *Kapita Ngofa*; d) *Leitenan*; e) *Alfiris*; f) *Jodati*; dan g) *Serjanti*. 3) *Pehak Jurutulis*, Administrative Affairs headed *Tullamo* (Royal Secretary) and supervise a) *Jurutulis Loaloe*; and

²¹ Anonymous. (2009). *Sejarah Hukum: Eksplorasi Nilai, Asas, Dan Konsep Dalam Dinamika Ketatanegaraan Kesultanan Tidore*. UM Press.

²² Faaroek, M. A. (2024). *Tullamo Kesultanan Tidore* [Interview].

b) Several Interior Ministers: 1) *Sadaha* (Head of the Royal Household); 2) *Sowohi Kie* (Government Protocol in the Field of Spirituality); 3) *Sowohi Cina* (Special Protocol for Chinese Affairs); 4) *Sahabandar* (Shipping Administration Affairs); and 5) *Fomanyira Ngare* (Public Relation Kerajaan). 4) *Pehak Lebee*, Religious/Sharia affairs are headed by a *Kadhi* who oversees a) Imam; b) Khotib; (c) Modify; and d) *Marinyo Gama*. The above description shows that the Gurabunga Customary Law Society shows the existence and fulfillment of elements as a customary law community based on the Minister of Home Affairs Regulation Number 52 of 2014. According to the Theory of Legal Protection of Philipus M. Hadjon, which is intended as a means of legal protection for the people against government actions, it is divided into preventive legal protection and repressive legal protection, prioritizing balance in state life so that legal protection for the people is directed to efforts to be able to prevent disputes between the government and the people, as well as resolve disputes between the government and the people through deliberation or through the judiciary.²³ Furthermore, the construction of the concept of systematic legal protection pays attention to the diversity of customary law, embraces differences or plurality as a common identity through the recognition of cultural identity, facilitates as much participation as possible in a free state, provides a complaint process (objections/lawsuits/demands), provides assistance/legal assistance, allocates fair compensation and is able to encourage community capacity building through Empowerment.

Changing the Status of Urban Villages to Traditional Villages: Projections and Strategies

The transition of the status of a village to a customary village is a process of changing the form of regional government that involves a shift from the modern government system to a customary government system. This process is generally motivated by the desire of the community to return to their cultural roots, as well as the potential for better natural and social resource management through customary systems. In Indonesia, this change in status is regulated in Law Number 6 of 2014 concerning Villages. This law provides space for the community to take the initiative to change status, both from village to village, and from village to customary village. Operationally, the Regulation of the Minister of Home Affairs Number 1 of 2017 concerning Village Planning provides a clear legal framework regarding changes in village status, including the transition from sub-district to customary village. Regulation provides space for the community to be able to take the initiative to change status, with the aim of providing flexibility in government management and development at the village level. The change in the status of the village to a customary

²³ Tampubolon, W. S. (2016). Upaya Perlindungan Hukum Bagi Konsumen Ditinjau Dari Undang Undang Perlindungan Konsumen. *Jurnal Ilmiah Advokasi*, 4(1), 53-61. <https://jurnal.ulb.ac.id/index.php/advokasi/article/view/356>

village as stipulated in the Minister of Home Affairs Regulation Number 1 of 2017, is basically a form of village planning. This process is carried out based on community initiative and pays attention to the potential and characteristics of the area concerned.

As for the mechanism that needs to be passed, the first is the Community Initiative, where the change in status must begin with the initiative of the local community. This is evidenced through village deliberations or village communication forums attended by all elements of society. Second, the fulfillment of requirements, where the proposed change of status must meet the requirements that have been set, such as the number of populations, the area of the area, the potential of natural and social resources, the existence of strong and recognized customary institutions, and the availability of basic infrastructure. Furthermore, the Approval Process, the proposed change of status is then submitted to the district/city government for approval. The local government will conduct a study and evaluation of the proposal. Finally, the Making of Regional Regulations, if the proposal is approved, the district/city government will issue a regional regulation (Perda) regulating the change in status. The change in the status of Urban Villages to Customary Villages according to Permendagri Number 1 of 2017 is carried out by considering the existence of rural community life, with characteristics including homogeneous community conditions, community livelihoods are mostly in the agricultural or fishery fields.

The aspiration of the Gurabunga customary law community to change the status of the Village to a Customary Village politically and legally can be carried out based on community initiatives agreed in the village communication deliberations forum which is then followed up by the local government and stipulated by the Regional Regulation. The Jojau of the Sultanate of Tidore, M. Amien Faroek, stated that "the cultural identity of the Gurabunga customary law community is still very strong, so that the urban style of life in the administrative government structure of the village is actually not very appropriate, if the existing government in the form of a village is more appropriate in implementing a traditional life system." Likewise, the former Gurabunga Village Head, Samsul Arifin, stated "... The aspirations of the people of Gurabunga want this Village to be returned to its original position, namely the village because Gurabunga has a cultural history and a very important position in the Sultanate of Tidore, therefore by maintaining this cultural identity with the structure of village government becomes more autonomous in the exercise of authority based on the matter of origin".

4. Conclusion

The transition of the status of Gurabunga Village to a Customary Village is an important step in maintaining and preserving the cultural identity of the Gurabunga customary law community that has existed for a long time. This change not only aims to return to cultural roots but also improves more sustainable management of natural and social resources through a traditional

governance system that has proven to have the values of local wisdom. The implementation of this status change is regulated through Law Number 6 of 2014 concerning Villages and Permendagri Number 1 of 2017 which provides a clear legal framework for the process, which includes community initiatives, fulfillment of requirements, and local government approval. Therefore, this change in status provides an opportunity for the Gurabunga people to gain greater autonomy in the management of government and regional development in accordance with customary principles and local wisdom. The suggestion from this study is the importance of involving all elements of society in the process of changing the status through village deliberations or village communication forums, as well as ensuring that all administrative and substantial requirements can be met. In addition, strong support from the local government is needed to ensure that this process runs smoothly and in accordance with applicable regulations. The recommendation of this study is for the government to provide greater space for the recognition and protection of customary law communities in Indonesia, including facilitating the drafting of regional regulations that specifically regulate the status of customary villages. Thus, it is hoped that the change in the status of Gurabunga Village to a Customary Village can strengthen cultural identity, improve community welfare, and be able to maintain the preservation of natural and social resources in the area.

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